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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

RASHAEL HILL-AZAH,

Plaintiff and Appellant,

v.

CITY OF FREMONT,

Defendant and Respondent.

A144150

(Alameda County
Super. Ct. No. RG13701168)

I.

INTRODUCTION

Appellant was struck by a car while walking in a crosswalk that was located in the middle of a street near the entrance to a hospital emergency room. In her subsequent personal injury action, appellant sought damages from the City of Fremont (the City) for maintaining a dangerous condition of public property in violation of Government Code section 835 (section 835).¹ The trial court sustained the City's demurrer to appellant's third amended complaint (TAC) without leave to amend on the ground that appellant failed to allege facts to establish that the crosswalk where her injury occurred was a dangerous condition. We conclude that the pleaded facts create a factual question as to whether the crosswalk was a dangerous condition within the meaning of the pertinent statutes. Thus, the City's demurrer was improperly sustained and the judgment dismissing it from this case must be reversed.

¹ Unless otherwise specified, statutory references are to the Government Code.

II. STATUTORY FRAMEWORK

Section 835 states: “Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: [¶] (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or [¶] (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.”

The term “dangerous condition” is defined in section 830, subdivision (a) (section 830(a)), which states: “ ‘Dangerous condition’ means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.”

“Public property is in a dangerous condition within the meaning of section 835 if it ‘is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself.’ [Citation.] A condition is not dangerous ‘if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial, or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.’ (§ 830.2.)” (*Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1105 (*Cordova*).)

The statutory scheme identifies some specific conditions that do not constitute a dangerous condition as a matter of law. For example, section 830.4 states: “A condition

is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code.”

Section 830.8, which is also relevant in this case, states: “Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.”

As noted in our introduction, appellant sustained her injuries when she was hit by a car. “A public entity is not, without more, liable under section 835 for the harmful conduct of third parties on its property. [Citation.] But if a condition of public property ‘creates a substantial risk of injury even when the property is used with due care’ [citation], a public entity ‘gains no immunity from liability simply because, in a particular case, the dangerous condition of its property combines with a third party’s negligent conduct to inflict injury.’ [Citation.]” (*Cordova, supra*, 61 Cal.4th at p. 1105.)

III.

FACTUAL AND PROCEDURAL BACKGROUND

A. Pleading Allegations²

In 2005, the City installed a pedestrian crosswalk on Civic Center Drive in Fremont (the crosswalk). The crosswalk is located in the middle of the block, outside the

² “On appeal from a judgment of dismissal following the sustaining of a demurrer without leave to amend, we assume the truth of all properly pleaded facts. [Citations.] We also accept as true all facts that may be implied or inferred from those expressly alleged. [Citations.]” (*Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 633, fn. 3.)

entrance to the Washington Hospital Emergency Room. Two lanes of northbound traffic and two lanes of southbound traffic travel through this crosswalk. The street is heavily used by drivers traveling at speeds exceeding 30 miles per hour and also by pedestrians crossing the street in order to utilize the emergency room entrance. There is substantial “visual noise” at this location, including hospital signage, an overhead pedestrian bridge, and an AC Transit bus stop. Because the crosswalk is located on the far side of the bus stop, AC Transit buses routinely use the curbside lane in advance of the crosswalk to stop at or pull away from the bus stop.

Before the crosswalk was installed, the Fremont City Council expressed concern about putting a crosswalk in the middle of a block, and it also questioned why the City decided “not to install a traffic light to protect pedestrians,” which was something that the hospital had specifically requested. In response to these concerns, City engineers made representations at an open session of a City Council meeting that the City was taking alternative measures by installing warning lights in advance of the crosswalk so that drivers would be alerted to the upcoming pedestrian crosswalk. However, the crosswalk that the City subsequently installed was not equipped with any type of advance warning device. Instead, “flashing beacons” were installed at the east and west corners of the crosswalk. When activated by a pedestrian, an amber light in the beacon would flash in the direction of the oncoming traffic.

After the crosswalk was installed, there were multiple vehicle-pedestrian accidents and near-miss accidents in the crosswalk, including catastrophic accidents in December 2009, February 2010 and August 2012. In 2012, the City retained a professional traffic engineering firm to provide advice regarding proper safety measures necessary to alert drivers of the pedestrian crossing. The hospital also retained an engineering firm to make safety recommendations to the City. The hospital’s consultant recommended installing an advance warning to drivers approaching the crosswalk. It also recommended moving an existing AC Transit bus stop from the near side of the crosswalk to the far side of the crosswalk “for reasons related to known and customary engineering practices regarding visual obstructions to motorists in a second lane caused by large buses approaching a

Pedestrian Crossing in the first lane.” The City’s consultant made written recommendations to install advanced warnings including, for example, an in-pavement lighting system, and flashing signs posted 200 feet before the crosswalk in both directions. The City did not follow any of these recommendations.

On May 17, 2013, appellant was using the crosswalk when she was struck by a car driven by Sung Eun Kim. Kim did not “recognize” that she was approaching a crosswalk until it was too late to stop. Furthermore, Kim’s view of the west side flashing beacon and of appellant as she entered the crosswalk was blocked by an AC Transit bus that was stopped at the curbside lane in front of the crosswalk, close to the nearby bus stop. Before appellant entered the crosswalk she activated the beacon lights, believing they would alert approaching vehicles of her presence in the crosswalk. The stopped bus blocked appellant’s view of vehicles approaching in the middle lane, but she believed that she could safely cross the street because she did not know that motorists in the middle lane could not see her or the flashing beacon light. The collision caused appellant to suffer “severe, permanent and disabling injuries and damages.”

In her TAC, appellant incorporated the allegations summarized above into two causes of action, the first against the City for violating section 835, and a second cause of action for negligence against Kim and the owner of the car Kim was driving when she struck appellant in the crosswalk. Appellant’s theory, as alleged in the TAC, was that the dangerous condition of the crosswalk and Kim’s negligence were both proximate causes of her injuries.

B. The Demurrer Ruling

The City filed a demurrer to the TAC. Without explicitly addressing the distinct elements of a cause of action under section 835, the City focused exclusively on the

dangerous condition requirement, arguing that the TAC allegations did not demonstrate that the crosswalk was a dangerous condition of public property.³

The trial court sustained the City's demurrer without leave to amend. The court found that the facts alleged in the TAC did not establish a dangerous condition of public property for three reasons. First, the City was immune from liability for failing to provide traffic signs or warnings at the crosswalk. (§§ 830.4, 830.8.) Second, the presence of buses and/or heavy traffic at the subject location could not be used to satisfy the statutory definition of a dangerous condition because they were not physical characteristics of the crosswalk itself. (§ 830(a).) Finally, the TAC did not allege facts to demonstrate that some condition of the crosswalk or surrounding property caused Kim to fail to yield and injure appellant. The court opined such allegations were necessary because Kim had a statutory duty to yield to pedestrians using a marked crosswalk. (Veh. Code, §§ 21950-21951.)

IV. DISCUSSION

A. Appellant Alleged the Existence of a Dangerous Condition

"The existence of a dangerous condition is usually a question of fact and may be resolved as a question of law only if reasonable minds can come to but one conclusion. [Citations.]" (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5 (*Mittenhuber*)). "Accordingly, if the facts pleaded by the plaintiff as a matter of law cannot support the finding of the existence of a dangerous condition within the meaning of the statutory scheme, a court may properly sustain a demurrer to the complaint. [Citations.]" (*Brenner, supra*, 113 Cal.App.4th at p. 440.) We independently review the

³ "To state a cause of action against a public entity under section 835, a plaintiff must plead: (1) a dangerous condition existed on the public property at the time of the injury; (2) the condition proximately caused the injury; (3) the condition created a reasonably foreseeable risk of the kind of injury sustained; and (4) the public entity had actual or constructive notice of the dangerous condition of the property in sufficient time to have taken measures to protect against it. [Citations.]" (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439 (*Brenner*)).

demurrer ruling and determine de novo whether appellant alleged facts to satisfy the dangerous condition element of her cause of action under section 835. (*Vitkievicz v. Valverde* (2012) 202 Cal.App.4th 1306, 1310-1311 (*Vitkievicz*).)⁴

The facts alleged or reasonably inferred from the TAC include the following: (1) the crosswalk was located in the middle of a street, which is not a standard or expected location for a crosswalk; (2) there was no sign or signal providing motorists with advance warning they were approaching a mid-block crosswalk; (3) the City elected to position a warning beacon that flashed in the direction of approaching vehicles at the crosswalk near the curb, where it could not be seen by a motorist traveling in the middle lane when a large vehicle was either stopped or travelling in the curbside lane near the approach to the crosswalk; (4) large buses routinely stopped in the curbside lane because of the nearby bus stop; (5) pedestrians using the crosswalk could not see if a vehicle was approaching in the middle lane when a large vehicle was stopped in the curbside lane; (6) the beacons positioned at the ends of the crosswalk gave pedestrians the impression that approaching drivers were aware that a pedestrian was present; and (7) multiple accidents, many of which seriously injured pedestrians, occurred at this location.

When considered as a whole, these facts are sufficient to support a finding that the crosswalk was a dangerous condition within the meaning of the statutory scheme summarized above; the alleged facts support a reasonable conclusion that the crosswalk created a substantial risk of injury to a pedestrian using due care and acting in a reasonably foreseeable manner by entering the crosswalk after activating the warning beacons. (§ 830(a).) Such a person could mistakenly believe that it was safe to cross the street when in fact her safety was at risk because motorists driving on the busy roadway were not provided with any advance notice of the mid-street crosswalk, and the warning

⁴ Because government liability for a dangerous condition is governed by statute, the complaint allegations must be “sufficiently detailed and specific to support an inference” that the dangerous condition element of appellant’s section 835 cause of action is satisfied. (*Mittenhuber, supra*, 142 Cal.App.3d at p. 5.) “General allegations are regarded as inadequate.” (*Ibid.*)

beacon that had been activated was not visible to a substantial number of those drivers because of the location of both the crosswalk and the beacon itself.

The City contends that the crosswalk described in the TAC is not a dangerous condition as a matter of law because of a combination of three reasons which essentially track the trial court's demurrer ruling: (1) the City is immune from dangerous condition claims based on inadequate warning signals; (2) the alleged visual obstruction at the crosswalk was an AC Transit bus which was not a physical feature of the public property; and (3) the accident resulted from Kim's failure to exercise due care by yielding at the crosswalk. We will separately address these three contentions.

B. The City's Immunity

As noted earlier, section 830.4 states that a public property is not a dangerous condition "merely" because of the failure to install specific types of regulatory traffic control devices. (§ 830.4.) Thus, section 830.4 "implicitly confers a limited immunity from injury liability on a public entity if that failure is the only basis for fixing such liability. Where, however, the dangerous condition of public property exists for reasons other than or in addition to the 'mere[]' failure to provide such controls or markings, the public entity is liable for injury therefrom if the conditions of its liability under section 835 are otherwise met." (*Washington v. City and County of San Francisco* (1990) 219 Cal.App.3d 1531, 1535-1536, italics & fn. omitted (*Washington*).)

The crosswalk described in the TAC was allegedly dangerous not *merely* because the City failed to install a regulatory traffic signal, but for several additional reasons, including that: (1) the City elected to install the crosswalk in the middle of a busy street, rather than at a corner, and in dangerous proximity to a bus stop; (2) the crosswalk spanned four lanes traveling in two directions in front of a hospital emergency room; and (3) the beacons the City elected to install were positioned in a way which misled pedestrians about whether it was safe to walk across the street. Thus, the TAC allegations do not establish that this case is governed by section 830.4, as the City contends.

The City points out that section 830.8 protects public entities from liability based on the failure to provide traffic warnings or signals not otherwise covered by section 830.4. However, government immunity under section 830.8 does not extend to the failure to provide a traffic warning device if such a device was “necessary to warn of a dangerous condition . . . which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.” (§ 830.8.) “A public entity, thus, loses its limited immunity under section 830.8 and is liable for injury where its failure to provide traffic regulatory or warning signals, of a type other than those described in section 830.4, constitutes a concealed trap for those exercising due care, assuming the conditions of its liability under section 835 are otherwise met.” (*Washington, supra*, 219 Cal.App.3d at pp. 1536-1537, italics omitted; see also *Kessler v. State of California* (1988) 206 Cal.App.3d 317, 321-322.)

Here, appellant alleged facts sufficient to support a finding that a pedestrian exercising due care could be lured, or “trapped,” into believing that it was safe to use the crosswalk after activating the beacon and waiting for the vehicle in the curbside lane to stop for her without realizing that drivers approaching in the middle lane could not see her or the lighted beacon. Thus, section 830.8 does not necessarily apply in this case.

The City acknowledges that the placement of a confusing or misleading warning device can create a dangerous condition of public property. (See, e.g., *Bakity v. County of Riverside* (1970) 12 Cal.App.3d 24 (*Bakity*); *Teall v. City of Cudahy* (1963) 60 Cal.2d 431 (*Teall*).) But it dismisses this authority as inapposite, arguing appellant cannot allege that the flashing beacon in this case was in an unusual or misleading place or that there was anything abnormal about it. According to the City, the warning beacon was exactly where a motorist would expect it to be—at the sidewalk adjacent to the crosswalk.

However, appellant did allege facts which put at issue whether the warning beacons were confusing or misleading. According to the TAC, the crosswalk itself was not installed in an expected location, but rather in the middle of a busy street. Furthermore, the City undertook to control traffic at that crosswalk, and invited pedestrians to rely on the beacons notwithstanding the fact that they were installed in

such a way that motorists using the middle lanes often would not be able to see them. These allegations were sufficient to put at issue whether the warning beacons were confusing or misleading to pedestrians exercising reasonable care. (*Teall, supra*, 60 Cal.2d at p. 434; *Bakity, supra*, 12 Cal.App.3d at pp. 30-31.)

The City mistakenly relies on *Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124, 136 (*Mixon*). In that case, a father and his three children used a marked crosswalk at an intersection to cross a street at night when a “motorist failed to yield to the pedestrians and struck one of the children.” (*Id.* at p. 129.) The father subsequently reported that he waited for traffic to stop before entering the crosswalk with his family. After a northbound driver stopped at the crosswalk, the family began to walk. Then a southbound driver approached while the family was still in the crosswalk. The father realized the southbound driver was not going to stop, but was unable to reach one of his children who was struck by the motorist. (*Id.* at pp. 129-130.) Plaintiffs alleged the intersection was a dangerous condition because of lighting configuration, the absence of traffic signals and signs, the placement of signs, the type of crosswalk markings, and the grade of the intersection. (*Id.* at p. 129.) In granting summary judgment to the State, the trial court found that “the public street intersection was not in a dangerous condition that endangered pedestrians.” (*Id.* at p. 130.) This court affirmed, finding that plaintiffs’ evidence failed to raise a triable issue of fact on the dangerous condition element of their claim, whether the factors upon which they relied were considered alone or in combination. (*Id.* at p. 138.)

The City contends that the *Mixon* “analysis applies in this case” and establishes that an “ ‘accurate, reasonably placed warning sign does not create a dangerous condition.’ ” (Quoting *Mixon, supra*, 207 Cal.App.4th at p. 136.) First, *Mixon* addressed the sufficiency of the evidence to support a dangerous condition theory. (*Mixon, supra*, 207 Cal.App.4th 124.) A different analysis applies here where we review a judgment based on a demurrer; the sole purpose of a demurrer is to test the legal sufficiency of the factual allegations in a complaint. (*Vitkievich, supra*, 202 Cal.App.4th at p. 1310.) Second, *Mixon* involved a different factual scenario. Crucially, the *Mixon* plaintiffs did

not contend that a deceptive traffic signal created a trap for pedestrians exercising due care. Indeed, the father in that case saw the approaching vehicle that struck his son. (*Mixon, supra*, 207 Cal.App.4th at p. 136.) Finally, *Mixon* states that “[a]n accurate, reasonably placed warning sign does not create a dangerous condition just because it focuses a driver’s attention on one roadway feature among many.” (*Ibid.*) The City errs by invoking this principle when the TAC allegations could support a finding that the warning beacon was not an accurate or reasonably placed warning sign.

C. *The AC Transit Bus*

Shifting focus, the City argues appellant failed to allege the crosswalk was a dangerous condition because she relied “solely on the presence of a large vehicle, the AC Transit bus, and not on any physical aspect of the crosswalk.” As pointed out above, the allegation that a bus was stopped in the curbside lane in front of the crosswalk when appellant was injured was not the sole basis for alleging that the crosswalk itself was a dangerous condition. Thus, this argument fails for this reason alone.

The City goes on to insist that, as a matter of law, appellant cannot rely on allegations that the warning beacon was obscured by the AC Transit bus to show that the crosswalk was a dangerous condition. As support for this contention, the City cites *Pekarek v. City of San Diego* (1994) 30 Cal.App.4th 909 (*Pekarek*). In that case, a small child was running across the street when she was hit by a driver who did not see her because she darted out from in front of an ice cream truck. Plaintiffs alleged that the city was liable for the child’s injuries because the street was maintained in a dangerous condition. Their theory was that “the city created a dangerous condition and a nuisance by permitting ice-cream trucks to operate on city streets.” (*Id.* at p. 911.) The trial court granted the city summary judgment and the appellate court affirmed. The *Pekarek* court found that in order to establish that a street is a dangerous condition, the plaintiffs were required to “demonstrate the city could have reduced the risk of harm to them by doing something to the street as opposed to the vehicles and pedestrians who use the street.” (*Id.* at p. 916.) The plaintiffs did not make that showing because nothing in the record

suggested that the street where the accident occurred could be altered or regulated in any manner that would have diminished the risk to plaintiffs. (*Id.* at p. 917.)

In contrast to *Pekarek*, in this case the TAC identifies physical features of the public property itself which created the allegedly dangerous condition, including the absence of an advance warning sign; the location of the crosswalk in the middle of multi-lane, traffic heavy street; and the misleading positioning of the warning beacon within that crosswalk. Furthermore, unlike the plaintiff in *Pekarek*, appellant here did allege facts to demonstrate the City could have “reduced the risk of harm to [her] by doing something to the [crosswalk] as opposed to the vehicles and pedestrians who use” the crosswalk. (*Pekarek, supra*, 30 Cal.App.4th at p. 916.) Indeed, appellant alleged that the City chose to ignore recommendations from its own consultant and from a consultant retained by the hospital about how to reduce the risk of harm to users of the crosswalk by making certain recommended physical changes to the crosswalk area. One safety recommendation that the City allegedly ignored was to move the bus stop that was located on the near side of the crosswalk.

By focusing exclusively on the specific bus that allegedly blocked Kim’s view of the warning beacon, the City overlooks potentially relevant allegations about the increased risk of danger to a reasonable pedestrian arising from the proximity of the crosswalk to the nearby bus stop. (See § 830(a) [use of “adjacent property” can contribute to risk of injury created by public property]; *Bonanno v. Contra Costa Transit Authority* (2003) 30 Cal.4th 139 (*Bonanno*) [the location of a bus stop may constitute a dangerous condition because of risks created by an adjacent uncontrolled intersection].) The TAC alleges that when the City elected to install the crosswalk on the far side of a bus stop, it knew that decision would mean that buses would routinely use the curbside lane to stop at and pull away from the bus stop and that the frequent presence of those buses in that location would prevent motorists who were using the middle lane from seeing a pedestrian or a curbside warning beacon. Thus, in addition to the location of the crosswalk, and the position of the warning beacon, the proximity of the bus stop was

another physical feature of public property which allegedly contributed to the creation of a dangerous condition.⁵

In *De La Rosa v. City of San Bernardino* (1971) 16 Cal.App.3d 739 (*De La Rosa*), a case the City attempts to distinguish, the plaintiff sued the city for damages he sustained when he was injured in a two-car intersection collision. At trial, plaintiff presented evidence that a tree and shrubbery near the intersection “impaired the visibility of the stop sign to such an extent that it was barely visible during the day and could not be seen by a southbound motorist at night.” (*Id.* at p. 745.) There was also evidence that numerous accidents had occurred at this intersection and that a “Stop Ahead” legend on the pavement was faded. (*Ibid.*) The *De La Rosa* court applied three settled principles to conclude the trial evidence was sufficient to warrant a jury determination whether the intersection was a dangerous condition. (*Id.* at p. 745.) First, the “existence of a dangerous condition is usually a question of fact,” and there was “considerable evidence from which the jury could reasonably have found” that the intersection was a dangerous condition. (*Ibid.*) Second, although the trees and shrubbery were on adjacent property, a condition of public property can be dangerous when “the condition of adjacent property exposes those using public property to a substantial risk of harm. [Citations.]” (*Id.* at p. 746.) Finally, while a public entity is not liable for failing to install traffic signs or signals, “when it undertakes to do so and invites public reliance upon them, it may be held liable for creating a dangerous condition in so doing. [Citations.]” (*Ibid.*)

⁵ In the lower court, the parties stipulated that the bus that allegedly blocked Kim’s view of the warning beacon was stopped at the crosswalk, not at the bus stop. The trial court construed this stipulation as establishing that the bus stop was not adjacent to the crosswalk as a matter of law. We disagree with this conclusion which appears to confuse adjacent with adjoining.

The term “adjacent” is not defined in the statute. (See § 830(a).) However, pertinent cases support the conclusion that adjacency is a factual question which depends on the context. (See *Bonanno, supra*, 30 Cal.4th 139 [location of a bus stop near a dangerous intersection was relevant to the determination whether the bus stop itself was a dangerous condition]; *Gardner v. City of San Jose* (1967) 248 Cal.App.2d 798 [nearby subway analyzed as adjacent to allegedly dangerous intersection]; *Bakity, supra*, 12 Cal.App.3d 24 [stop sign 36 feet in front of crosswalk was adjacent property].)

The principles elucidated in *De La Rosa* are inconsistent with the order sustaining the City's demurrer in this case. While the City may not have been required to install a traffic sign or signal at the crosswalk, allegations that the City undertook to do so and invited the public to rely on the traffic beacons are outside the scope of the City's statutory immunity. (*De La Rosa, supra*, 16 Cal.3d at p. 746; *Teall, supra*, 60 Cal.2d at p. 434.) Furthermore, TAC allegations regarding the use of adjacent property may also be relevant to the factual determination of whether the crosswalk itself was a dangerous condition. (*De La Rosa, supra*, 16 Cal.App.3d at p. 746; *Bakity, supra*, 12 Cal.App.3d at p. 30.) Finally, when considered as a whole, the TAC allegations present a factual question as to whether the crosswalk constitutes a dangerous condition of public property. (*De La Rosa, supra*, 16 Cal.3d at p. 745; *Bakity, supra*, 12 Cal.App.3d at p. 30.)

D. Third Party Negligence

The City posits that TAC allegations which demonstrate appellant's injuries were caused by Kim's negligent failure to yield to appellant at the marked crosswalk preclude a finding that the crosswalk was a dangerous condition as a matter of law. Although the City's reasoning is unclear, it urges us to consider Vehicle Code sections 21950 and 21951, statutes which generally require that a motorist yield to a pedestrian in a marked crosswalk and refrain from overtaking or passing another vehicle that has stopped at a crosswalk to permit a pedestrian to cross the roadway. The City intimates that because Kim's statutory duty of due care required her to stop at the crosswalk regardless whether her view of appellant and the warning beacon were blocked by a vehicle in the curbside lane, the crosswalk was not a dangerous condition as a matter of law. The trial court expressed a similar view, finding that the TAC allegations were deficient because appellant failed to allege that some dangerous feature of the crosswalk or roadway caused Kim to fail to yield and injure appellant.

Allegations regarding Kim's negligent driving do not preclude appellant from proving that the crosswalk is a dangerous condition of public property for several reasons. First, "a public entity may be liable for a dangerous condition of public property

even when the immediate cause of a plaintiff's injury is a third party's negligent or illegal act (such as a motorist's negligent driving), if some physical characteristic of the property exposes its users to increased danger from third party negligence or criminality.

[Citation.] Public entity liability lies under section 835 when some feature of the property increased or intensified the danger to users from third party conduct.

[Citation.]" (*Castro v. City of Thousand Oaks* (2015) 239 Cal.App.4th 1451, 1457-1458 (*Castro*), citing *Bonanno, supra*, 30 Cal.4th at p. 152.)

In addition, contrary to the trial court's demurrer ruling in this case, section 835 does not require a plaintiff to show that the alleged dangerous condition of public property "caused the third party negligence that precipitated the accident" in his or her case. (*Cordova, supra*, 61 Cal.4th at p. 1106; see also *Ducey v. Argo Sales Co.* (1979) 25 Cal.3d 707, 715-719; *Lane v. City of Sacramento* (2020) 183 Cal.App.4th 1337.) In *Cordova*, for example, a negligent driver caused another car to strike a large magnolia tree planted in a center median owned and maintained by the city. (*Cordova, supra*, 61 Cal.4th at p. 1104.) The collision with the tree killed or injured all of the car's occupants. In a subsequent wrongful death action against the city, plaintiffs alleged that the configuration of the roadway where the fatal accident occurred constituted a dangerous condition of public property because it created an unreasonable risk to motorists who might lose control of their vehicles. (*Id.* at p. 1104.) The city obtained summary judgment, but the Supreme Court reversed, holding that the plaintiffs were not required to establish that the allegedly dangerous condition caused the third party conduct that precipitated the accident. (*Id.* at pp. 1106-1108.)

In this court, the City fails to address *Cordova, supra*, 61 Cal.4th 1099. Furthermore, both the City and appellant overlook *Castro, supra*, 239 Cal.App.4th 1451, a case addressing a markedly similar factual situation. There, a mother and her children were struck by a van while crossing a street in a marked crosswalk at the T-intersection of a busy boulevard. (*Id.* at pp. 1453-1454.) Before leaving the sidewalk, the mother pressed a button to activate a pedestrian warning beacon and saw a vehicle stop in one of the two westbound lanes. Unfortunately, the driver of the van who struck the mother and

her children was traveling in the other westbound lane and did not see them or the warning beacon. (*Id.* at p. 1454.)

In the *Castro* plaintiffs' personal injury action, the trial court granted the city summary judgment on the ground that there was no material issue of fact as to whether the roadway or crosswalk was a dangerous condition. (*Castro, supra*, 239 Cal.App.4th at p. 1457.) The court reasoned that drivers and pedestrians are required to use due care and that drivers in particular must “ ‘yield to pedestrians in marked crosswalks, no matter what.’ ” (*Ibid.*) In reversing the judgment, the appellate court agreed with the trial court's remarks but found them beside the point because a city “cannot expose a pedestrian to an increased risk of harm.” (*Ibid.*)

The *Castro* plaintiffs had alleged that the roadway and crosswalk was a dangerous condition because it created “ ‘an immediate hazard, a trap, and a deceptive and dangerous condition to pedestrians’ ” exercising due care. (*Castro, supra*, 239 Cal.App.4th at p. 1458.) Their theory was “that the warning beacon, even though intended to make the crosswalk safer, did the opposite and lulled pedestrians to think it was safe to cross.” (*Id.* at p. 1460.) The *Castro* court found that this theory raised a jury question: “Reasonable minds could differ on whether, under the totality of the circumstances, the intersection/crosswalk posed a substantial risk of injury to a pedestrian exercising due care. [Citation.]” (*Ibid.*) Thus, despite the fact that the City's evidence showed that the crosswalk satisfied applicable traffic engineering standards, there were triable issues of fact as to “whether the warning beacon, in combination with other roadway/crosswalk factors created a dangerous condition for pedestrians using the crosswalk.” (*Id.* at p. 1458.)

The *Castro* court also found that evidence the mother had failed to look for cars after she activated the warning beacon did not entitle the city to summary judgment. (*Castro, supra*, 239 Cal.App.4th at pp. 1458-1459.) The question whether mother's “failure to look for cars” relieved the city of liability was for the jury to decide because, the court explained, “ ‘[w]here the condition of property pose[s] a substantial risk of injury to the ordinary foreseeable user exercising due care, the fact that the particular

plaintiff may not have used due care is relevant only to his [or her] comparative fault and not to the issue of the presence of a dangerous condition. [Citation.]’ [Citation.]” (*Ibid.*)

Cordova and *Castro* reinforce our conclusions in this case. The TAC allegations when considered as a whole describe a condition of public property which could be deemed dangerous by a trier of fact. Furthermore, the question whether the crosswalk was a dangerous condition does not depend on whether attributes which make it dangerous were the immediate cause of the accident which precipitated appellant’s injuries. Thus, the City’s demurrer was erroneously sustained.

V.

DISPOSITION

The judgment is reversed. Appellant is awarded her costs on appeal.

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.